

SA2004 RF0001

ROBERT A. GRIMM  
PRESIDENT, GRIMMWAY FARMS  
POST OFFICE BOX 81498  
BAKERSFIELD, CALIFORNIA 93380-1498  
(661) 854-6270

January 2, 2004

Via Hand Delivery

The Honorable Bill Lockyer  
Attorney General of the State of California  
c/o Tricia Knight, Initiative Coordinator  
1300 I Street  
Sacramento, California 95814

RECEIVED  
JAN 02 2004

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary -  
Initiative Constitutional and Statutory Amendment

Dear Attorney General Lockyer:

I, Robert A. Grimm, am the proponent of a proposed measure entitled "The "California Workers' Compensation Reform and Accountability Act," a copy of which is attached hereto. Pursuant to Article II, Section 10(d) of the California Constitution and California Elections Code Section 9002, I request that a title and summary be prepared for the attached proposed measure. Enclosed is a check for \$200.

I am a registered voter in the State of California. My address as registered to vote is set forth on an attachment page. I request that this address be used to verify my status as a registered voter, but otherwise be kept confidential pursuant to your policy. I have signed and attached to this letter the Declaration required by Elections Code Section 9608. You are hereby authorized to direct all inquiries and correspondence relative to this proposed measure to my attorney as follows:

Dana W. Reed, Esq.  
Reed & Davidson, LLP  
520 South Grand Avenue, Suite 700  
Los Angeles, California 90071-2665  
Telephone: (213) 624-6200  
Facsimile: (213) 623-1692  
E-mail: Dana@politicallaw.com

SA2004 RF0001

The Honorable Bill Lockyer  
Attorney General of the State of California  
c/o Tricia Knight, Initiative Coordinator  
January 2, 2004  
Page 2

Thank you for your assistance in this matter.

Sincerely,

Robert A. Grimm  
Proponent  
Telephone: (661) 854-6270

Enclosures

SA2004RF0001

**DECLARATION PURSUANT TO ELECTIONS CODE SECTION 9608**

I, Robert A. Grimm, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

ROBERT A. GRIMM

Dated this 30<sup>th</sup> day of December, 2003

**RECEIVED**  
JAN 02 2004

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

This initiative measure amends a section of the California Constitution and adds to, deletes and amends sections of the Labor Code. Existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in **bold, underlined italic type** to indicate they are new.

## **PROPOSED LAW**

### **SECTION 1. Title.**

This measure shall be known and may be cited as “The California Workers’ Compensation Reform and Accountability Act.”

### **SECTION 2. Findings and Declarations.**

The People of the State of California hereby find and declare all of the following:

- a) California’s workers’ compensation system was designed to provide medical care to workers injured on the job, to provide wage replacement during the period of their recovery and to provide payments for the permanently disabled.
- b) A healthy, prosperous economy benefits every Californian, providing good jobs, wages and benefits for employees, generating tax revenues to pay for vital public services, and expanding opportunities for all Californians.
- c) The high cost of workers’ compensation is making California a more costly place to do business than many other states.
- d) California’s workers’ compensation system must be reformed to rebuild our State’s economy, guarantee just compensation for real injuries, and punish those who abuse the system.

### **Section 3. Purpose and Intent.**

The People of the State of California hereby declare their purpose and intent in enacting the California Workers’ Compensation Reform and Accountability Act to be as follows:

- a) Facts and medical evidence will become the basis to support workers’ compensation claims.
- b) Only physicians certified by the State of California to be competent in the area of treating workplace injuries will be permitted to evaluate compensation claims and prescribe treatment for injured workers.
- c) Nothing in this Act is intended to affect an employee’s existing right to choose his or her own State certified physician.

- d) All diagnoses of workplace injuries must be supported by medical evidence and consistent with American Medical Association (AMA) standards and guidelines. All treatment must be consistent with the Medical Treatment Utilization Guidelines adopted by the Administrative Director for the particular injury or condition. All disability reports must be based upon medical evidence and must be consistent with AMA standards and guidelines for the particular disability or condition.
- e) Penalties must be increased for medical practitioners guilty of abusing the workers' compensation system.
- f) This Act will provide that employees and employers will be considered to be equal before the law.

**SECTION 4.           Article XIV, Section 4 of the California Constitution is hereby amended to read:**

The Legislature, *or the People through the initiative power, are* is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation; *or by initiative constitutional or initiative statutory amendments*, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation; *or initiative constitutional or initiative statutory amendments*, to the end that the administration of such legislation *or initiative constitutional or initiative statutory amendments* shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

*All workers' compensation laws and findings of fact shall be interpreted in an impartial and balanced manner such that all parties are considered to be equal before the law.*

The Legislature, or the People through the initiative power, are is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation; or initiative constitutional or initiative statutory amendments, by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature, or the People through the initiative power, may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

The Legislature, or the People through the initiative power, shall have power to provide for the payment of an award to the State in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

**SECTION 5. Section 139.2 of the Labor Code is amended to read:**

139.2.           Qualified medical evaluators; Requirements; Appointment and reappointment; Termination; Panels; Review; Regulations.

(a) The administrative director shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. The appointments shall be for two-year terms.

(b) The administrative director shall appoint or reappoint as a qualified medical evaluator a physician, as defined in Section 3209.3, who is licensed to practice in this state and who demonstrates that he or she meets the requirements in paragraphs (1), (2), ~~(6)~~ (5), and ~~(7)~~ (6), and, if the physician is a medical doctor, doctor of osteopathy, ~~doctor of chiropractic~~, or a psychologist, that he or she also meets the applicable requirements in paragraph (3); or ~~(4)~~, ~~or~~ ~~(5)~~.

(1) Prior to his or her appointment as a qualified medical evaluator, passes an examination written and administered by the administrative director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. Physicians shall not be required to pass an additional examination as a condition of reappointment. A physician seeking appointment as a qualified medical evaluator on or after January 1, 2001, shall also complete prior to appointment, a course on disability evaluation report writing approved by the administrative director. The administrative director shall specify the curriculum to be covered

by disability evaluation report writing courses, which shall include, but is not limited to, 12 or more hours of instruction.

(2) Devotes at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be appointed as a qualified medical evaluator.

(3) Is a medical doctor or doctor of osteopathy and meets one of the following requirements:

(A) Is board certified in a specialty by a board recognized by the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California.

(B) Has successfully completed a residency training program accredited by the American College of Graduate Medical Education or the osteopathic equivalent.

(C) Was an active qualified medical evaluator on June 30, 2000.

(D) Has qualifications that the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, both deem to be equivalent to board certification in a specialty.

~~(4) Is a doctor of chiropractic and meets either of the following requirements:~~

~~(A) Has completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the administrative director, the Board of Chiropractic Examiners and the Council on Chiropractic Education:~~

~~(B) Has been certified in California workers' compensation evaluation by a provider recognized by the administrative director. The certification program shall include instruction on disability evaluation report writing that meets the standards set forth in paragraph (1):~~

(5) (4) Is a psychologist and meets one of the following requirements:

(A) Is board certified in clinical psychology by a board recognized by the administrative director.

(B) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to *Section 2914 of the Business and Professions Code*, from a university or professional school recognized by the administrative director and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

~~(6)~~ **(5)** Does not have a conflict of interest as determined under the regulations adopted by the administrative director pursuant to subdivision (o).

~~(7)~~ **(6)** Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The administrative director shall adopt standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (2) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications of subdivision (b) and meets all of the following criteria:

(1) Is in compliance with all applicable regulations and evaluation guidelines adopted by the administrative director.

(2) Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a contested hearing rejected by the workers' compensation administrative law judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the workers' compensation administrative law judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the administrative director.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the administrative director during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the administrative director may in his or her discretion reappoint or deny reappointment according to regulations adopted by the administrative director. In no event may a physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority be reappointed.

(e) The administrative director may, in his or her discretion, suspend or terminate a qualified medical evaluator during his or her term of appointment without a hearing as provided under



subdivision (k) or (l) whenever either of the following conditions occurs:

(1) The evaluator's license to practice in California has been suspended by the relevant licensing authority so as to preclude practice, or has been revoked or terminated by the licensing authority.

(2) The evaluator has failed to timely pay the fee required by the administrative director pursuant to subdivision (n).

(f) The administrative director shall furnish a physician, upon request, with a written statement of its reasons for termination of, or for denying appointment or reappointment as, a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the administrative director shall review his or her decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The administrative director shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h)(1) When the injured worker is not represented by an attorney, the medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request.

(2) The administrative director shall promulgate a form that shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the workers' compensation administrative law judge will consider the evaluation prepared by the doctor you select to decide your claim."

(3) When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who meet all of the following criteria:

(A) He or she does not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o).

(B) He or she is certified by the administrative director to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence.

(C) He or she has not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the administrative director pursuant to subdivision (n) or for any other reason.

(4) When the medical director determines that an employee has requested an evaluation by a type of specialist that is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122, shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.3, the administrative director shall adopt regulations concerning the following issues:

(1) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. Except as provided in this subdivision, the timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The administrative director shall develop regulations governing the provision of extensions of the 30-day period in cases: (A) where the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline; and, (B) to extend the 30-day period by not more than 15 days when the failure to meet the 30-day deadline was for good cause. For purposes of this subdivision, "good cause" means: (i) medical emergencies of the evaluator or evaluator's family; (ii) death in the evaluator's family; or, (iii) natural disasters or other community catastrophes that interrupt the operation of the evaluator's business. The administrative director shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Sections 4061 and 4062. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomical loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of any disputed medical issues.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the Insurance Commissioner, or deemed appropriate by the administrative director.

(6) Any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) Except as provided in this subdivision, the administrative director may, in his or her discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the administrative director, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the administrative director or the appeals board.

(6) Has made material misrepresentations or false statements in an application for appointment or reappointment as a qualified medical evaluator.

No hearing shall be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has done either of the following:

(A) Failed to timely pay the fee required pursuant to subdivision (n).

(B) Had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(l) The administrative director shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the administrative director may, in his or her discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The administrative director shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The administrative director shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The administrative director shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board. If a physician is suspended or terminated as a qualified medical evaluator under this subdivision, a report prepared by the physician that is not complete, signed, and furnished to one or more of the parties prior to the date of conviction or action of the licensing board, whichever is earlier, shall not be admissible in any proceeding before the appeals board nor shall there be any liability for payment for the report and any expense incurred by the physician in connection with the report.

(n) Each qualified medical evaluator shall pay a fee, as determined by the administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and are available for expenditure upon appropriation by the Legislature, and shall not be used by any other department or agency or for any purpose other than administration of the programs the Division of Workers' Compensation related to the provision of medical treatment to injured employees.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

**SECTION 6. Section 3202 of the Labor Code is amended to read:**

~~3202. Liberal construction~~

~~This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.~~

**3202. Preponderance of the evidence.**

**All workers' compensation laws and findings of fact shall be interpreted in an impartial and balanced manner such that all parties are considered equal before the law. All parties and lien claimants are required to meet the evidentiary burden of proof on all issues by a preponderance of the evidence. "Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.**

**SECTION 7. Section 3202.5 of the Labor Code is hereby repealed:**

~~3202.5. ——— Construction as to burden of proof; preponderance of the evidence~~

~~Nothing contained in Section 3202 shall be construed as relieving a party or a lien claimant from meeting the evidentiary burden of proof by a preponderance of the evidence. "Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.~~

**SECTION 8. Section 3208.1 of the Labor Code is amended to read:**

**3207.1 Specific and cumulative injuries.**

**(a)** An injury may be either: **(a) (1)** "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or **(b) (2)** "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.

**(b) In the case of occupational disease or cumulative injury, the employee shall demonstrate by a preponderance of the evidence that the actual events of employment were predominant as to all causes combined of the occupational disease or cumulative injury.**

**SECTION 9. Section 3209.3 of the Labor Code is amended to read:**

**3208.3. Physician; psychologist; acupuncturist; request for medical collaboration; Acupuncturists and chiropractors unauthorized to determine disability.**

(a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e) Nothing in this section shall be construed to authorize acupuncturists or chiropractors to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under Section 2708 of the Unemployment Insurance Code.

**(f) Nothing in this section shall be construed to authorize acupuncturists or chiropractors to refer an employee for additional treatment to any physical therapist or any other physician as defined by Labor Code Section 3209.3.**

**(g) Within one year of the adoption of the Medical Treatment Utilization Schedule mandated by Labor Code Section 5307.27, all physicians providing treatment for industrial injuries and illnesses must be certified by the Administrative Director to be knowledgeable and competent to provide medical treatment in accordance with the Medical Treatment Utilization Schedule. Pursuant to Labor Code Section 5307.27, the primary treating physician shall oversee any treatment provided by secondary physicians to ensure that all treatment is in accordance with the Medical Treatment Utilization Schedule.**

**SECTION 10. Section 3218 of the Labor Code is amended to read:**

3218. Violations of Section 3215; penalties.

**(a)** A violation of Section 3215 is a public offense punishable upon a first conviction by incarceration in the county jail for not more than one year, or by incarceration in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both incarceration and fine. A second or subsequent conviction is punishable by incarceration in state prison.

**(b) Any physician or healthcare professional convicted of violating Labor Code Section 3215 shall not be eligible for certification pursuant to Labor Code Section 3209.3(g) for a term of five years from the date of conviction.**

**SECTION 11. Section 4062.9 of the Labor Code, as amended by Senate Bill 228 of the 2003-2004 Regular Session, is hereby repealed:**

~~4062.9 Additional comprehensive medical evaluations; presumptions~~

~~(a) In cases where an additional comprehensive medical evaluation is obtained under Section 4061 or 4062, if the employee has been treated by his or her personal physician, or by his or her personal chiropractor, as defined in Section 4601, who was predesignated prior to the date of injury as provided under Section 4600, the findings of the personal physician or personal chiropractor are presumed to be correct. This presumption is rebuttable and may be controverted by a preponderance of medical opinion indicating a different level of disability. However, the presumption shall not apply where both parties select qualified medical examiners.~~

~~(b) In all cases other than those specified in subdivision (a), regardless of the date of injury, no presumption shall apply to the opinion of any physician on the issue of extent and scope of medical treatment, either prior or subsequent to the issuance of an award.~~

~~(c) The administrative director shall develop, not later than January 1, 2004, and periodically revise as necessary thereafter, educational materials to be used to provide treating physicians and chiropractors with information and training in basic concepts of workers' compensation, the role of the treating physician, the conduct of permanent and stationery evaluations, and report writing.~~

~~(d) The amendment made to this section by Senate Bill 228 of the 2003-2004 Regular Session and this initiative shall not constitute good cause to reopen or rescind, alter, or amend any order, decision, or award of the appeals board.~~

**SECTION 12. Section 4604.5 of the Labor Code, as added by Senate Bill 228 of the 2003-2004 Regular Session, is amended as follows:**

**4603.5 Medical treatment utilization schedule – Guidelines to reflect accepted practices and current standards of care; rebuttable presumption on issue of extent and scope of medical treatment; inapplicability of section.**

(a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices as generally accepted by the health care community, and shall apply the current standards of care, including, but not limited to, appropriate and inappropriate diagnostic techniques, treatment modalities, adjustive modalities, length of

treatment, and appropriate specialty referrals. These guidelines shall be educational and designed to assist providers by offering an analytical framework for the evaluation and treatment of the more common problems of injured workers, and shall assure appropriate and necessary care for all injured workers diagnosed with industrial conditions.

(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines, and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medical Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury.

(d) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and Environmental Medical Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic and 24 physical therapy visits per industrial injury.

~~(e) The presumption afforded to the treating physician in Section 4062.9 shall not be applicable to cases arising under this section.~~

(f) ~~(e)~~ This section shall not apply when an insurance carrier authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

~~(g)~~ ~~(f)~~ For all injuries not covered by the American College of Occupational and Environmental Medicine Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence based medical treatment guidelines generally recognized by the medical community.

**SECTION 13. Labor Code Section 4660 is amended to read:**

4660. Percentage of permanent disability; schedule.

**(a) The percentage of permanent disability shall be determined based on the Guide to the Evaluation of Permanent Impairment by the American Medical Association, 5<sup>th</sup> Edition, and as subsequently revised.**

**(b) The percentage of permanent disability as determined in paragraph (a) shall be modified only for age and occupation as set forth in the Schedule for Rating Permanent Disability, April 1997 Edition, Sections 3, 4, 5 and 6 of which may be modified from time to time by the Administrative Director.**



~~(a) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to the diminished ability of such injured employee to compete in an open labor market.~~

~~(b) The administrative director may prepare, adopt, and from time to time amend, a schedule for the determination of the percentage of permanent disabilities in accordance with this section. Such schedule shall be available for public inspection, and without formal introduction in evidence shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule.~~

~~(c) Any such schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities which result from compensable injuries received or occurring on and after the effective date of the adoption of such schedule, amendment or revision, as the fact may be.~~

~~(d) On or before January 1, 1995, the administrative director shall review and revise the schedule for the determination of the percentage of permanent disabilities. The revision shall include, but not be limited to, an updating of the standard disability ratings and occupations to reflect the current labor market. However, no change in standard disability ratings shall be adopted without the approval of the Commission of Health and Safety and Workers' Compensation. A proposed revision shall be submitted to the commission on or before July 1, 1994.~~

**SECTION 14.**Section 4663 of the Labor Code is hereby repealed and recodified as follows:

~~4663. Aggravation of preexisting disease.~~

~~In case of aggravation of any disease existing prior to a compensable injury, compensation shall be allowed only for the proportion of the disability due to the aggravation of such prior disease which is reasonably attributed to the injury.~~

**4663. Apportionment of permanent disability based on causation.**

**(a) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.**

**(b) The physician shall determine what percentage of the permanent disability was caused by the direct result of the injury arising out of and occurring in the course of employment and what percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury.**

**(c) The employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.**

**SECTION 15. ~~Section 4750 of the Labor Code is hereby repealed:~~**

~~4750. ——— Extent of employer's liability, compensation for later injury alone~~

~~An employee who is suffering from a previous permanent disability or physical impairment and sustains permanent injury thereafter shall not receive from the employer compensation for the later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with or in relation to the previous disability or impairment.~~

~~The employer shall not be liable for compensation to such an employee for the combined disability, but only for that portion due to the later injury as though no prior disability or impairment had existed.~~

**SECTION 16. ~~Section 4750.5 of the Labor Code is hereby repealed:~~**

~~4750.1. Subsequent noncompensable injuries:~~

~~An employee who has sustained a compensable injury and who subsequently sustains an unrelated noncompensable injury, shall not receive permanent disability indemnity for any permanent disability caused solely by the subsequent noncompensable injury.~~

~~The purpose of this section is to overrule the decision in Jensen v. WCAB, 136 Cal.App.3d 1042.~~

**SECTION 17. ~~Broad Construction.~~**

~~This Act shall be broadly construed and applied in order to fully promote its underlying purposes and to be consistent with the United States Constitution and the California Constitution. If any provision of this act conflicts directly or indirectly with any other provision of law, or any other statute previously enacted by the Legislature, those other provisions shall be null and void to the extent that they are inconsistent with this act, and are hereby repealed.~~

**SECTION 18. ~~Amendment of Act.~~**

~~No provision of this act may be amended except by a constitutional amendment or statute, as appropriate, that becomes effective only when approved by the electorate.~~

**SECTION 19. ~~Conflicting Ballot Measures.~~**

~~(a) In the event that this measure and another measure or measures relating to workers' compensation shall appear on the same statewide election ballot, the provisions of the other measures that would affect in whole or in part the field of workers' compensation shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of the other measure or measures shall be null and void in their entirety. In the event~~

that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but superseded by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

#### **SECTION 20. Severability.**

If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.